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PATENT APPLICATION
Docket No. 14531.71.4.3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

In re application of:)	
	John J. Daniels)	
Serial No.:	09/993,780)	
Filed:	November 16, 2001)	Art Unit
For:	REMOTELY CONTROLLING A VIDEO RECORDER)	2621
Examiner:	Y. Young Lee)	

BRIEF FOR APPELLANT

VIA eFILE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

On August 1, 2008, Appellant timely filed a Notice of Appeal from the action of the Examiner in finally rejecting all of the pending claims in this application. This appeal brief is being filed under the provisions of 37 C.F.R. § 41.37. The filing fee of \$510.00, as set forth in 37 C.F.R. § 41.20(b)(2), is submitted herewith.

REAL PARTY IN INTEREST

The real party in interest is Microsoft Corporation.

RELATED APPEALS AND INTERFERENCES

A notice of appeal and an appeal brief were previously filed in connection with this application (on Dec. 19, 2005 and Feb. 21, 2006, respectively), but the case was then returned by the Examiner to prosecution and the appeal was not docketed with the Board.

In addition, this appeal could be said to be “related to” Appeal No. 2006-0604 in the sense that Appeal No. 2006-0604 is an appeal from an application (09/952,582) which, like the present application, claims priority to application serial no. 08/306,642 and to application serial no. 08/038,240. The subject matter at issue in the two appeals, however, is different, and the present appeal is unlikely to be affected by the decision in Appeal No. 2006-0604. Appeal No. 2006-0604 was decided on June 30, 2006. A copy of the decision is presented in the Related Proceedings Appendix.

STATUS OF CLAIMS

The application was originally filed with claims 1-36. Claims 37-80 were added by amendment. Claims 1-2, 8-14, 16-36, 38, 41-43, 48-63, and 77 have been cancelled. Claims 3-7, 15, 37, 39, 40, 44-47, 64-76, and 78-80 remain pending, have been rejected by the Examiner, and are now being appealed.

STATUS OF AMENDMENTS

No amendment has been filed subsequent to final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The appealed claims are directed to methods for remotely controlling a video recorder. Recording instructions are provided to a recording device *from a server* and *in response to* the selection of a television program from a programming schedule.

There are two independent claims: claims 37 and 44. Claim 37 presents the invention from the point of view of the server that provides the recording instructions. Claim 44 presents the invention from the point of view of the recording system that interacts with the server. The subject matter of claim 44 will first be described:

Claim 44 reads as follows:

44. In a recording system that is configured to record television programs and that is communicably connectable to a server through a network, a method for enabling the server to control the recording of one or more selected television programs by the recording system, the method comprising the acts of:

- sending a request from the recording system to the server for a program schedule that identifies television programs that can be received and recorded by the recording system;

- receiving, at the recording system, the program schedule from the server through the Internet and in response to the request, the program schedule being provided as a webpage;

- displaying, at the recording system, the program schedule after it is received from the server;

- receiving, at the recording system, a user selection from the program schedule of a particular television program to be recorded;

- sending a request from the recording system to the server for the selected and particular television program to be recorded;

- receiving, at the recording system, and directly in response to the request for the particular television program to be recorded, recording instructions that will cause the recording system to record the particular television program, wherein the recording instructions from the server are received by the recording system through at least one of a television signal and the Internet.

In claim 44, there is a “recording system.” The recording system may include a computer and a recording apparatus, such as a VCR. (*E.g.*, Specification at ¶¶ 130, 131, 132).

Alternatively, the recording system can be a recording apparatus that includes the processing capability that would otherwise be performed by a separate computer. (Specification at ¶¶ 130, 132, 135). In any event, in the claimed method, there is first a request to a server for a program schedule that identifies one or more television programs that can be received and recorded by the recording system. The request for the schedule is sent from the recording system. The server then provides the program schedule over the Internet to the recording system, where the schedule is displayed.

Figure 19 (reproduced below) illustrates an example of the display of a program schedule at the recording system:

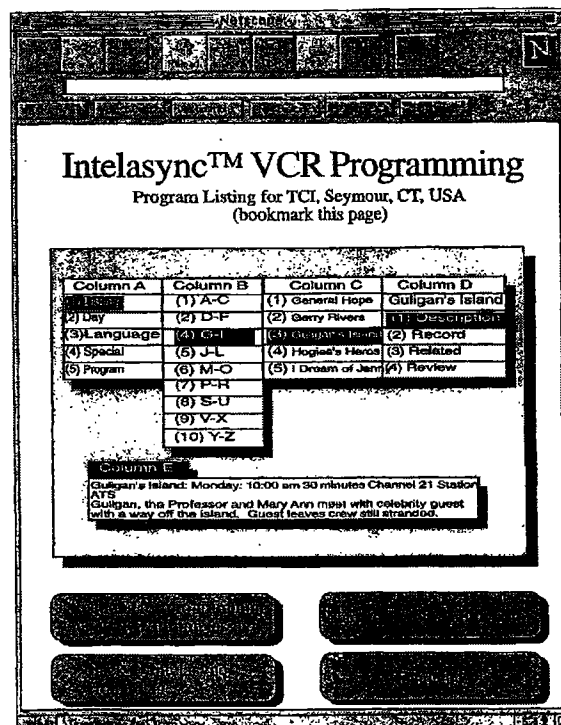


Figure 19

Figure 19 illustrates a web page that is being displayed on a television or computer monitor that can be made accessible to the user through an Internet connection. (Specification at ¶ 144). Other types of displays of program schedules are provided in the specification. In the particular display illustrated in Figure 19, the user can search for a television program by first selecting one

of the options under column A. (Specification at ¶ 145). In the example shown, the user has selected “listing” under column A. In the example shown, when the user selected “listing” in column A, column B popped up or became activated, presenting the options of the letters of the alphabet to the user. (Specification at ¶ 146). The user in this case has selected letters G-I. With this option selected, column C popped up with a list of television programs that start with the letters G-I. The user in this case has selected from column C the program “Guligan’s Island” and therefore column D has popped up with various options. The user in this case has selected the “description” option, and therefore column E displays a description of “Guligan’s Island” along with related programming information. (*Id.*). It should be noted that the user can select a “Record” option in column D.

Figure 23 (reproduced below) shows a web page that is displayed when a user has navigated through the “day” option of column A, the “Monday” option of column B, the “Time” option of column C, the “AM” option of column D, the “10:00am” option of column E, and the “Guligan’s Island” option of column F. Once the user selected the “Guligan’s Island” option, column G popped up with the option of recording the program. (Specification at ¶ 150):

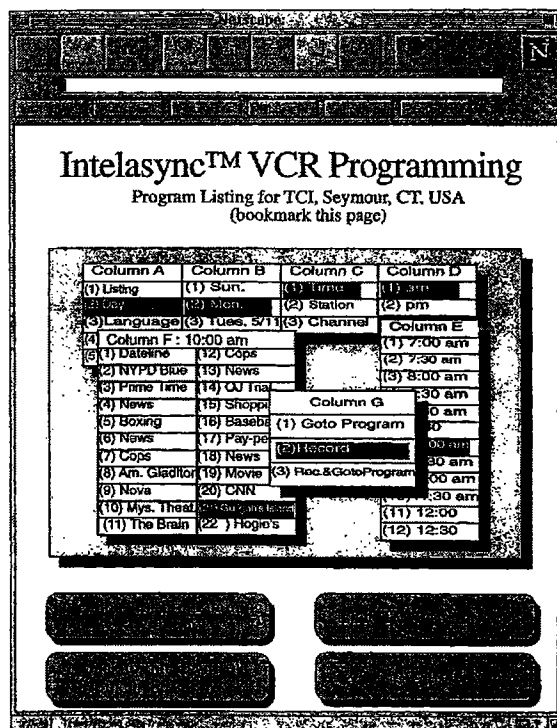


Figure 23

In Figure 23, as can be seen, the user has selected the option in Column G to “Record” the “Guligan’s Island” program.

Once the user has selected a television program from the program schedule displayed at the recording system, claim 44 next requires that another request to the server be sent from the recording system for that program to be recorded. In response to that request, the recording system receives recording instructions from the server either through a television signal or the Internet or both. The recording instructions will cause the recording device to be set up to record the selected television program. Recording instructions “include[] data such as time, channel, duration, repeat, date, etc. necessary to specify the program that has been selected to be recorded.” (Specification at ¶ 131). Recording instructions may also contain function commands, such as “a record command.” (Specification at ¶ 142). The record command may be provided as an ASCII-format character string assigned to the recording function. (Specification at ¶ 144). Significantly, the recording system does not merely use the information already

provided with the program schedule as recording instructions, but instead seeks (and uses) recording instructions *from the server* received *in response to* a selection from the schedule. In other words, *two* requests are made of the server, not just one: one request for the programming schedule and *another* request for recording instructions.

Whereas claim 44 recites a method that is performed at the recording system, claim 37 recites a method that is performed at the server. Claim 37 reads as follows:

37. In a network server that communicates over a network with a recording apparatus that is configured to record television programs, a method for enabling the server to control the recording of one or more selected television programs by the recording apparatus, the method comprising the acts of:

- storing a programming schedule at a server;

- storing recording control information at the server, the recording control information including at least one record command that is transmittable over a network to a recording apparatus that is configured to record television programming;

- the server receiving a user request, which is transmitted to the server through the Internet, for a webpage containing the programming schedule and that identifies one or more television programs;

- in response to the user request, the server providing a user Internet access to the programming schedule in the form of a navigable webpage and from which a particular television program can be selected by the user for recording;

- receiving, at the server, a user selection of the particular television program to be recorded, the selection of the particular television program to be recorded being made from the navigable webpage provided to the user through the Internet; and

- in response to the particular television program being selected for recording, the server transmitting recording control information to the recording apparatus over the network, the recording control information comprising recording instructions that are configured to cause the recording apparatus to record the particular television program and such that the recording apparatus will thereafter be set up to record the particular television program, and wherein the recording instructions are transmitted to the recording apparatus from the server through at least one of a television signal and the Internet.

Thus, in the method recited in claim 37, both a programming schedule and “recording control information” for a recording apparatus are stored at a server. The server then receives a request for the programming schedule. The server then provides the programming schedule in the form of a navigable webpage. An example of a webpage with such a programming schedule

has already been seen in Figures 19 and 23. As seen in Figures 19 and 23, the user can then select a television program from the programming schedule to be recorded. In claim 37, once that selection is made, the selection is sent to and received *at the server*. *In response*, the server transmits the “recording control information” to the recording apparatus through either a television signal or the Internet or both. The specification explains that “recording control information” can “include[] data such as time, channel, duration, repeat, date, etc. necessary to specify the program that has been selected to be recorded.” (Specification at ¶ 131). In claim 37, the “recording control information” must also contain a particular function command, *i.e.*, “a record command.” (Specification at ¶ 142). The record command may be provided as an ASCII-format character string. (Specification at ¶ 144). In any event, the “recording control information” comprises “recording instructions that are configured to cause the recording apparatus to record [a] particular television program.” Significantly, the recording instructions are sent by the server *in response to* a selection from the programming schedule, not with the programming schedule. In other words, *two* requests are received by the server, not just one: one request for the programming schedule and *another* request for the “recording control information.”

Figures 7 and 8 and corresponding Figures 9-10 and 15-18 provide examples of the steps set forth in the claims in flow-chart fashion. Figures 7, 8, and 9 are reproduced below:

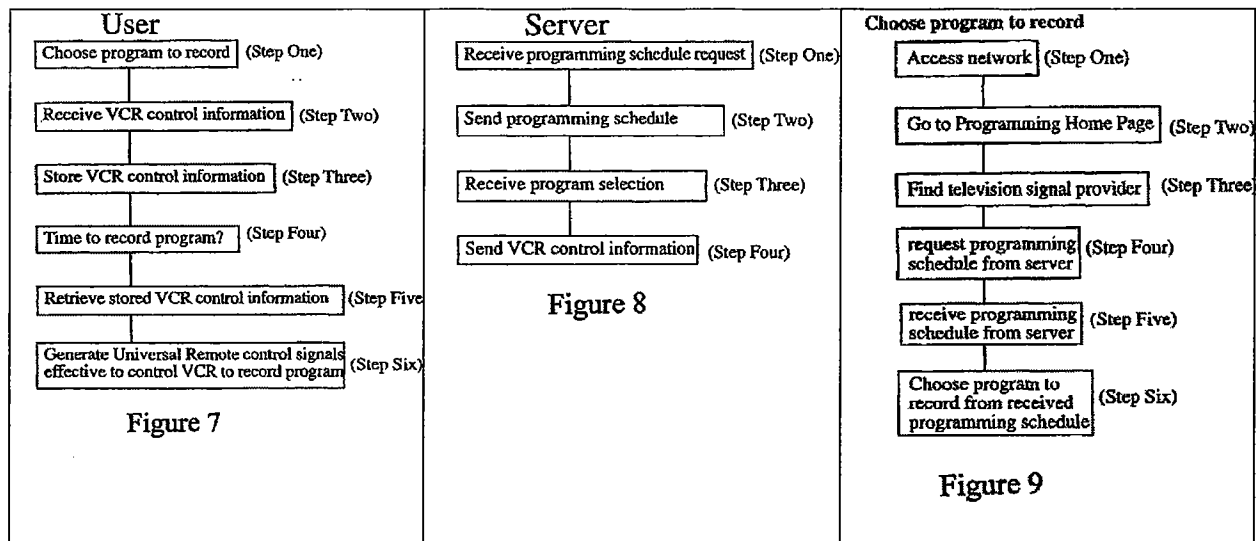


Figure 7 is a flow chart illustrating the basic steps performed at the recording system. (Specification at ¶¶ 43, 131-132). Figure 8 is a flow chart showing the basic steps performed at the server. (Specification at ¶¶ 44, 133). Figure 9 is a flow chart more specifically illustrating “Step One” in Figure 7. (Specification at ¶¶ 45, 134). Notice in Figure 7 that “VCR control information” is received *after* the step “Choose Program To Record.” Notice in Figure 8 that “VCR control information” is sent *after* the step “Send Program Schedule” and *after* the step “Receive Program Selection.”

The steps shown in these figures correspond to the steps set forth in the claims: Step Four of Figure 9 (and Step One of Figure 8) corresponds to the first step of claim 44,¹ Step Five of Figure 9 (and Step Two of Figure 8) corresponds to the second step of claim 44,² Step Six of Figure 9 corresponds to the third and fourth steps of claim 44,³ Step Three of Figure 8

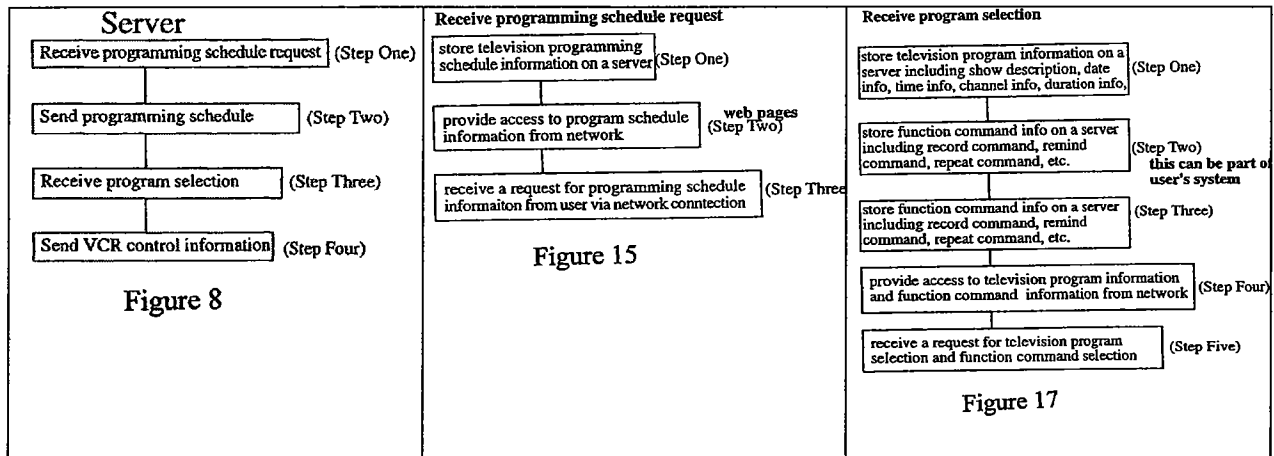
¹ “sending a request from the recording system to the server for a program schedule that identifies television programs that can be received and recorded by the recording system”

² “receiving, at the recording system, the program schedule from the server through the Internet and in response to the request, the program schedule being provided as a webpage”

³ “displaying, at the recording system, the program schedule after it is received from the server;
“receiving, at the recording system, a user selection from the program schedule of a particular television program to be recorded”

corresponds to the fifth step of claim 44,⁴ and Step Two of Figure 7 (and Step Four of Figure 8) corresponds to the sixth step of claim 44.⁵

A similar correspondence with Figures 8, 15, and 17 exists for claim 37. Those figures are reproduced below:



As already mentioned, Figure 8 is a flow chart showing the basic steps performed at the server. (Specification at ¶¶ 44, 133). Figure 15 is a flow chart more specifically illustrating “Step One” in Figure 8. (Specification at ¶¶ 51, 140). Figure 17 is a flow chart more specifically illustrating “Step Three” in Figure 8. (Specification at ¶¶ 53, 142).

Step One of Figure 15 corresponds to the first step of claim 37,⁶ Step Two of Figure 17 corresponds to the second step of claim 37,⁷ Step Three of Figure 15 corresponds to the third step

⁴ “sending a request from the recording system to the server for the selected and particular television program to be recorded”

⁵ “receiving, at the recording system, and directly in response to the request for the particular television program to be recorded, recording instructions that will cause the recording system to record the particular television program, wherein the recording instructions from the server are received by the recording system through at least one of a television signal and the Internet.”

⁶ “storing a programming schedule at a server”

⁷ “storing recording control information at the server, the recording control information including at least one record command that is transmittable over a network to a recording apparatus that is configured to record television programming”

of claim 37,⁸ Step Two of Figure 8 corresponds to the fourth step of claim 37,⁹ Step Three of Figure 8 corresponds to the fifth step of claim 37,¹⁰ and Step Four of Figure 8 corresponds to the sixth step of claim 37.¹¹ Once again, it should be emphasized that the recording control information (e.g., VCR control information) is sent by the server *after* and *in response to* a selection from the programming schedule, not with the programming schedule. (*See also* Specification at ¶ 133 (“*Upon receiving the data of the choice of the program to record, the server retrieves the program selection . . . and then sends the VCR control information . . .*”); Specification at ¶ 130 (“*When a television program is selected, the user’s computer receives data instructions from the computer network source depending on the selected television program. The data instructions are...used to determine when to record the selected television program.*”)).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Did the Examiner err in rejecting claims 3-7, 15, 37, 39, 40, 44-47, 64-76, and 78-80 under 35 U.S.C. § 103(a) as being unpatentable over Schein et al. (U.S. Pat. No. 6,388,714) in view of Klosterman (U.S. Patent No. 5,550,576)?

⁸ “the server receiving a user request, which is transmitted to the server through the Internet, for a webpage containing the programming schedule and that identifies one or more television programs”

⁹ “in response to the user request, the server providing a user Internet access to the programming schedule in the form of a navigable webpage and from which a particular television program can be selected by the user for recording”

¹⁰ “receiving, at the server, a user selection of the particular television program to be recorded, the selection of the particular television program to be recorded being made from the navigable webpage provided to the user through the Internet”

¹¹ “in response to the particular television program being selected for recording, the server transmitting recording control information to the recording apparatus over the network, the recording control information comprising recording instructions that are configured to cause the recording apparatus to record the particular television program and such that the recording apparatus will thereafter be set up to record the particular television program, and wherein the recording instructions are transmitted to the recording apparatus from the server through at least one of a television signal and the Internet”

ARGUMENT

I. Introduction

The Examiner has failed to establish a prima facie case of obviousness for any of claims 3-7, 15, 37, 39, 40, 44-47, 64-76, and 78-80 because the combination of references relied on by the Examiner does not disclose the requesting / sending of recording instructions from a server “in response to” the selection of a television program, as the claims require. And even if the Examiner has established the disclosure of these claim requirements, the Examiner has still failed to establish a prima facie case of obviousness for four other groups of claims: (1) Claims 3-7, 37, 39, 40, 45-46, 64-76, and 78-80; (2) Claims 69-72; (3) Claims 73 and 79; and (4) Claim 75. The Examiner’s rejection should be overturned.

II. The Examiner Has Not Established A Prima Facie Case of Obviousness For Any Claim

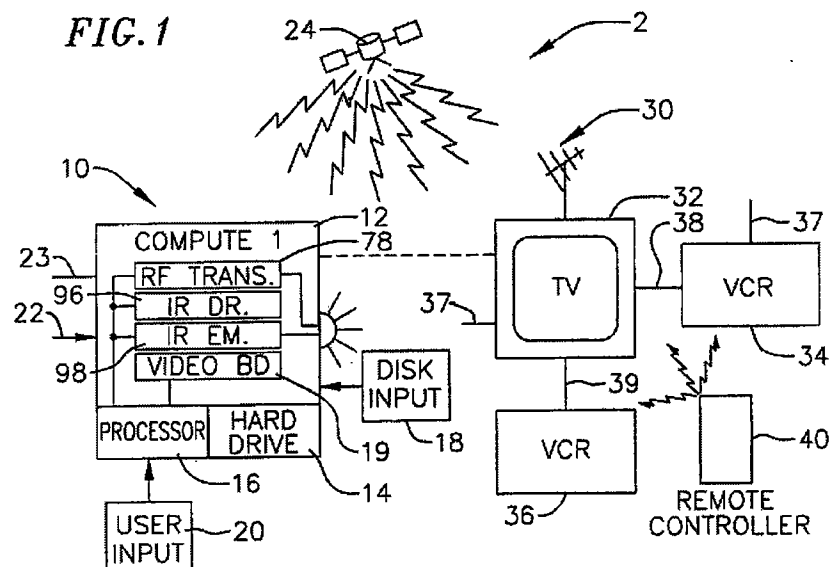
A. ***The Examiner Has Not Established A Prima Facie Case of Obviousness For Claims 3-7, 15, 37, 39, 40, 44-47, 64-76, and 78-80 Because The Combination Relied On By The Examiner Does Not Disclose The Requesting/Sending of Recording Instructions From A Server In Response To The Selection of a Television Program***

The Examiner has rejected all pending claims under 35 U.S.C. § 103(a) as being unpatentable over Schein et al. (U.S. Pat. No. 6,388,714) in view of Klosterman (U.S. Pat. No. 5,550,576). In the Final Office Action mailed May 2, 2008, the Examiner relies on the reasoning set forth in a previous Office Action mailed December 5, 2007. (See Office Action May 2, 2008, p. 2).

The Examiner’s rejection is erroneous because neither Schein nor Klosterman discloses a first request to a server for a programming schedule and then a *second request* for recording instructions made *in response to* the selection from that schedule, as the claims require. At most,

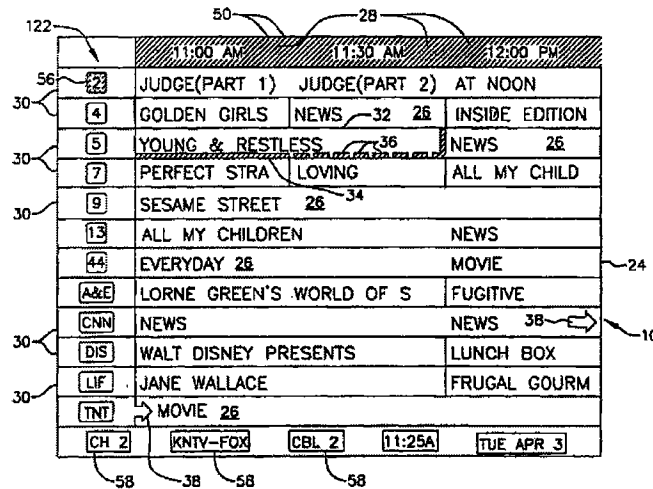
Schein and Klosterman disclose only a single request to a server for a programming schedule; neither discloses a further request to the server in response to a selection from that schedule.

One embodiment disclosed in Schein is illustrated in Figure 1 of that patent:



Schein explains that line 22 is a telephone line which provides access to the internet or to an on-line service. (5:36-37). Schein explains that line 22 can also be a coax cable, optical fiber or other land line. (5:43-44). In other embodiments, RF transmitter 78, IR driver 96, and IR emulator 98 can be located in a computer accessory 70 or VCR connector 90, as shown in Figures 3 and 4. (6:48-7:30; 8:17-19; 8:37-39; 8:44-46). Data needed to generate a television schedule is downloaded via line 22 to hard drive 14 of computer 12. (9:44-46; 9:63-64; 5:45-48; 9:7-9). Figure 2 illustrates an example of such a television schedule:

FIG. 2



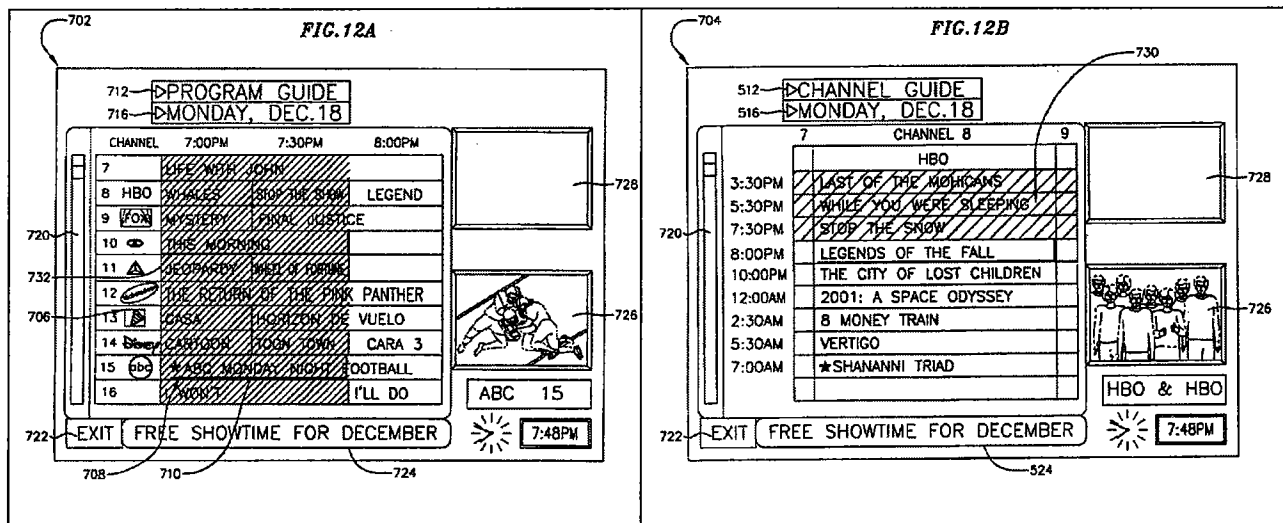
Schein further states that the user “can select different programs for automatic recording and/or retrieval and digital storage.” (6:8-9). Presumably, this “automatic recording” occurs using VCR 34 or VCR 36 illustrated in Figure 1. When this occurs, the system apparently uses information that it already has in order to carry out the recording, because the following is all that Schein discloses as to how the recording occurs: “software determines if the time for the automatic tune or record is equal to the present time. If the program start time is not equal to the present time, then the software waits.... If the time equals the present time, then the software performs automatic tuning or automatic recording....” (10:8-12; *see also* 6:29-47; 7:49-53; 8:24-27).

Similarly, in an embodiment using computer accessory 70 disclosed in Figure 3, Schein states that “memory 76 contains the key parameters need for recording and/or tuning to a selected television program. These parameters include the date of the program, the start time for the program, the end time for the program, the television channel providing the program, and which peripheral device shall be addressed for recording or viewing the program.” (6:65-7:3).

The applicant acknowledges that such parameters might qualify as “recording instructions” if the context in which they are presented to the recording apparatus indicates that

recording of the television program defined by those parameters should be carried out.¹² Nevertheless, Schein does not disclose that (1) “a request” is sent to a “server” for such parameters “for the selected and particular television program to be recorded” or (2) that such parameters are received “in response to” such a request, as steps five and six of claim 44 require. Similarly, Schein does not disclose that (1) “a user selection of the particular television program to be recorded” is “receiv[ed], at the server” or (2) that the server transmits such parameters “in response to” the television program being selected, as steps five and six of claim 37 requires.

Schein discloses another “program guide” and a “channel guide” in Figures 12A and 12B. These figures are reproduced below:



Schein explains that a user can use cursor 710 to select a television program in one of these guides. (17:51). In Figure 12B, the cursor is highlighting the television program entitled “LEGENDS OF THE FALL.” But Schein does not say that once the television program is selected, an identification of the program or a request is sent to a server, as required by claims 37 and 44. Nor does Schein say that in response to such a request, the server sends recording instructions, as required by claims 37 and 44.

¹² Although such parameters might qualify as “recording instructions,” they do not qualify as the “record command” required by claims 3-7, 37, 39, 40, 45-46, 64-76, and 78-80. See section II.B., *infra*.

The Examiner also relies on Figure 14. (Office Action mailed Dec. 5, 2007, at p. 3; Office Action mailed May 2, 2008, p. 3). In Figure 14A (reproduced below), the user has opened up an “InfoMenu” that is apparently associated with a television program. (19:8). As can be seen, the user could choose the option in the “InfoMenu” labeled “(3) Record This Program”:

FIG. 14A

-HOURS	
MOVIES: DRAMA	
(1)	MORE INFORMATION
(2)	TUNE TO THIS CHANNEL NOW
(3)	RECORD THIS PROGRAM
(4)	PUT THIS PROGRAM ON MY FAVORITES LIST
(5)	REMIND ME WHEN THIS PROGRAM AIRS
(6)	RESTRICT ACCESS TO THIS PROGRAM
(7)	LINKED SERVICE
(0) GO BACK TO PROGRAM GUIDE	

However, once again, there is no disclosure in Schein as to the method that would be used to record the program if that option were selected by a user. There is certainly no disclosure that (1) “a request” to record the selected program would be sent to a “server” or (2) that recording instructions would be sent “*in response to*” such a request, as steps five and six of claim 44 require. Nor is there any disclosure that (1) “a user selection of the particular television program to be recorded” would be “receiv[ed], at the server” or (2) that the server would transmit recording instructions “in response to” the television program being selected, as steps five and six of claim 37 require.

Instead, Schein explains only that if the user chooses the option labeled “(7) Linked Service,” then he can order this program as “video on demand.” (19:6-7). Figure 14B (reproduced below) shows the menu that appears when the “Linked Service” option is selected,

and Figure 14C (reproduced below) shows a screen in which the user is prompted to enter a password in order to get on-demand delivery of the “Legends of the Fall” program. (19:9-20):

FIG. 14B

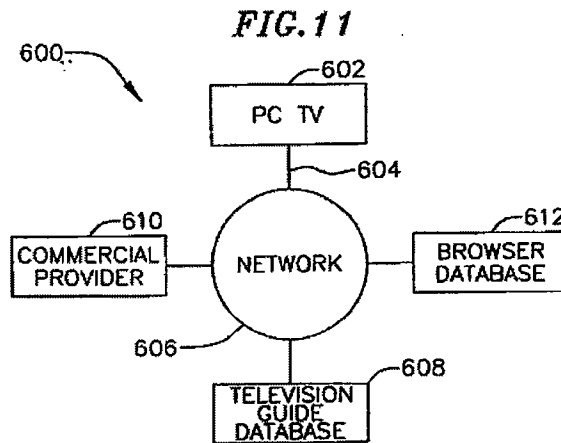
MOVIES: DRAMA
(1) MORE INFORMATION
(2) \$ ORDER MOVIE WHEN YOU LIKE...
(3) \$ HBO INTERVIEW: BRAD PIT
(4) A HOPKINS "REMAINS OF THE DAY"
(5) \$ UNIVERSAL PICTURES ONLINE...
(6) \$ UNIVERSAL STUDIOS FAMILY TICKET OFFER
(<) BACK TO PREVIOUS MENU
(0) GO BACK TO PROGRAM GUIDE

FIG. 14C

ENTERING PASSWORD							
BY ENTERING YOUR PASSWORD YOU ARE CONFIRMING A PURCHASE OR VALIDATION OF YOUR ID. PLEASE ENTER YOUR PASSWORD TO ORDER THIS MOVIE FOR THE LISTED PURCHASE PRICE.							
HELP: PASSWORD							
(1) INFO ON (LEGENDS OF THE FALL)	\$3.95						
<table border="1"> <tr> <td colspan="2">ENTER PASSWORD FOR DELIVERY IN 7 MINUTES</td> </tr> <tr> <td>7:55PM</td> <td>LEGENDS OF THE FALL-\$3.95</td> </tr> <tr> <td colspan="2">.....</td> </tr> </table>		ENTER PASSWORD FOR DELIVERY IN 7 MINUTES		7:55PM	LEGENDS OF THE FALL-\$3.95	
ENTER PASSWORD FOR DELIVERY IN 7 MINUTES							
7:55PM	LEGENDS OF THE FALL-\$3.95						
.....							
(2) ACCEPT PASSWORD...							
(<) BACK TO PREVIOUS MENU							
(0) GO BACK TO PROGRAM GUIDE							

There is absolutely no discussion of recording the television program in connection with Figures 14B or 14C, let alone recording the television program as the result of (1) “a request” to a “server” for that program to be recorded or (2) recording instructions that are sent “*in response to*” such a request, as steps five and six of claim 44 require. Nor is there any disclosure that (1) “a user selection of the particular television program to be recorded” would be “receiv[ed], at the server” or (2) that the server would transmit recording instructions “in response to” the television program being selected, as steps five and six of claim 37 require.

The Examiner has also relied on Figure 11 (Office Action mailed Dec. 5, 2007, p. 3), reproduced below:



Schein explains that Figure 11 illustrates “a system and method...for linking television viewers with broadcasters and advertisers during the broadcast of a commercial program.” (16:9-12). Schein explains that there is a “television guide database 608...coupled to the Internet 606 for providing the television schedule information to PCTV 602.” (16:18-20). However, there is absolutely no discussion in connection with Figure 11 of recording a television program, let alone recording the television program as the result of (1) “a request” to a “server” for that program to be recorded or (2) recording instructions that are sent “*in response to*” such a request, as steps five and six of claim 44 require. Nor is there any disclosure that (1) “a user selection of the particular television program to be recorded” would be “receiv[ed], at the server” or (2) that the server would transmit recording instructions “*in response to*” the television program being selected, as steps five and six of claim 37 require.

In the December 5, 2007 Office Action, the Examiner concedes that Schein does not disclose step six of claims 44 and 37. The Examiner states: “Schein et al differs from the present invention in that it fails to particularly disclose the server transmitting recording control information to the recording apparatus in response to the selection.” (Office Action mailed Dec. 5, 2007, p. 5). In the May 2, 2008 Final Rejection, the Examiner rejects the claims “for the same

reasons” as set forth in the December 5, 2007 Office Action. (Office Action mailed May 2, 2008, p. 2).

As noted above, Schein also fails to disclose step five of claims 44 and 37. Schein fails to disclose that “a request” is sent to a “server” once the selection is made or that the selection is “receiv[ed], at the server,” as step five of claims 44 and 37 require.

In an effort to supply the claim requirements that are not disclosed in Schein, the Examiner in the December 5 Office Action points to Klosterman (U.S. Pat. No. 5,550,576). However, Klosterman does not disclose the claim requirements that are lacking in Schein, nor does it provide any motivation to modify Schein in the manner claimed.

Figures 1A through 1D of Klosterman disclose a variety of configurations of a system that manages television programs received from multiple sources. Figure 1A, for example, is reproduced below:

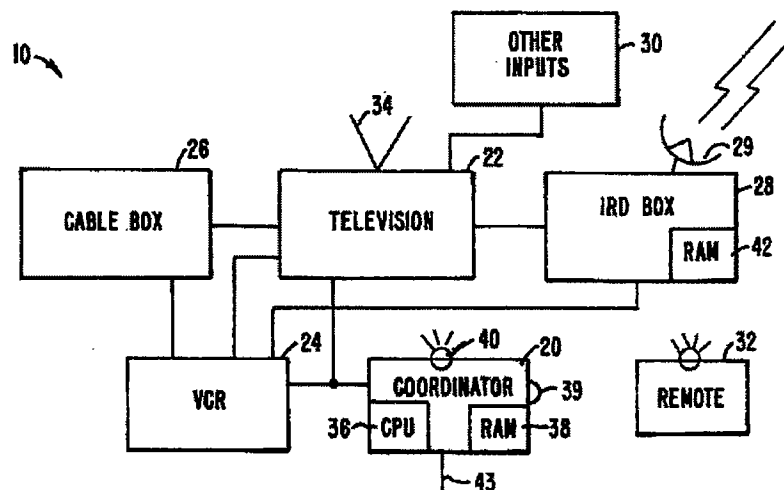


FIG. 1A.

As can be seen, television 22 and VCR 24 are provided with input from cable box 26 and a satellite IRD box 28. (3:65-66). Other inputs 30 may also be supplied to the television 22

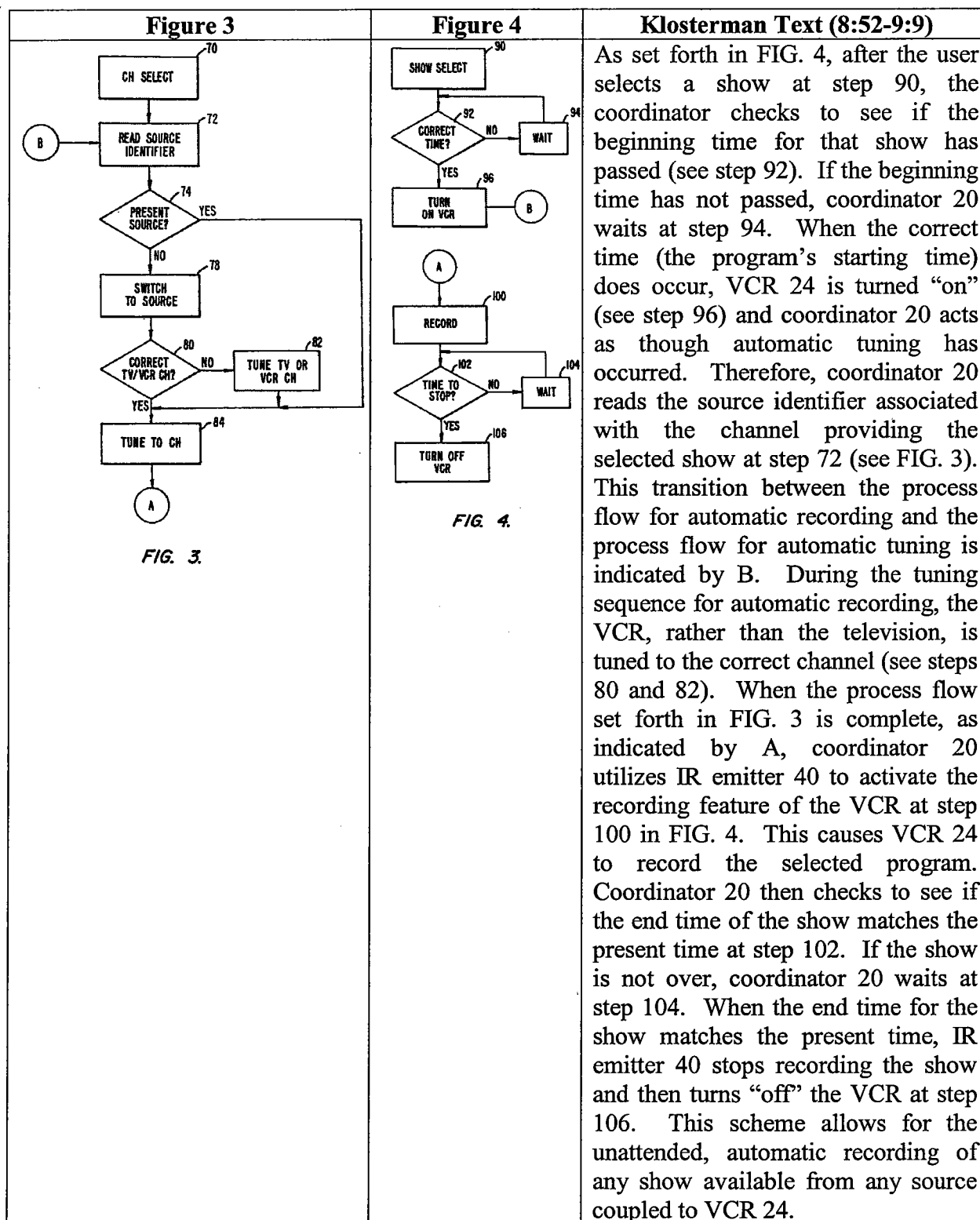
and/or VCR 24. (3:66-67). The system operates under the control of coordinator 20. (3:64-65; 4:17-30).

IRD box 28 receives television programs along with program schedule information transmitted by the satellite service provider. (4:46-55). Program schedule information can also be provided through cable box 26 or other inputs 30. (4:56-58). Figure 2 is an example of an on-screen display of a schedule grid guide that has been assembled from the program schedule information:

CH	1:00 P.M.	1:30 P.M.	2:00 P.M.	...
2	BATMAN™	→	SOAP™	
3	E.I.™	→	→	→
4	NEWS	→	SPORT EVENT	→
HBO	SPECIAL	PRESENTATION	→	
...				

FIG. 2.

Klosterman explains that a remote 32 (shown in Figure 1A) can be used to select a certain channel or show for automatically recording a television show. (7:19-25). As with Schein, however, the Klosterman system apparently uses information that it already has in order to carry out the recording, given that the process used for recording a selected television show is set forth in Figures 3 and 4 and described as follows:



As is apparent from this disclosure, Klosterman does not teach that (1) “a request” to a “server” for that program to be recorded or (2) recording instructions are sent “*in response to*” such a request, as steps five and six of claim 44 require. Likewise, Klosterman does not teach that (1) “a user selection of the particular television program to be recorded” would be “receiv[ed], at the server” or (2) that the server would transmit recording instructions “in response to” the television program being selected, as steps five and six of claim 37 require. Instead, the Klosterman system apparently uses information that it already has in order to carry out the recording.

Even the Examiner’s own description of Klosterman confirms that the required disclosure is not present in Klosterman. The Examiner asserts that Klosterman teaches “the well known remote control of a recording device.” (Office Action mailed Dec. 5, 2007, p. 6). Specifically, the Examiner characterizes Klosterman as follows:

Klosterman however, in Figures 1-4, teaches the concept of such well known technique of transmitting the recording control information comprising recording instructions (e.g., source ID, CH, time, etc.) that are configured to cause the recording apparatus 24 to record the particular television program (e.g. Fig. 2) and such that the recording apparatus 24 will thereafter be set up to record the particular television program, and wherein the recording instructions are transmitted to the recording apparatus 24 through at least one of a television signal and the Internet (e.g. 26-30; wherein the recording instructions are embedded in and received with the television signal 26-30; wherein subsequent to downloading recording instructions, and data comprising an end-of VCR control information (e.g. Fig. 4) to the computing system 10. [sic]

(Office Action mailed Dec. 5, 2007, pp. 5-6).

The problem is that there is no disclosure (or even assertion) that the “recording instructions” (source ID, CH, time etc.) to which the Examiner points are transmitted in the appropriate order and in response to the acts required by the claims. Significantly, the Examiner does not say that Klosterman teaches that (1) “a user selection of the particular television

program to be recorded” is “receiv[ed], *at the server*” or (2) that the server transmits recording instructions (e.g. source ID, CH, time, etc.) “*in response to*” the television program being selected, as steps five and six of claim 37 require. Likewise, the Examiner does not say that Klosterman teaches that (1) “a request” for the program to be recorded is sent to a “remote server” or (2) that recording instructions (e.g. source ID, CH, time, etc.) are sent “*in response to*” such a request, as steps five and six of claim 44 requires. Thus, even the Examiner’s characterizations of Klosterman are insufficient to establish the presence of the claim limitations lacking in Schein.

Indeed, although the Examiner’s final May 2 office action purports to adopt the reasoning set forth in the previous December 5th office action, the final office action then concedes that Klosterman does not disclose the limitations lacking in Schein. (Compare Office Action mailed May 2, 2008, p. 2 with p. 3). The Examiner states: “It is true that Klosterman does not disclose any network details as that claimed by the Applicant.” (Office Action mailed May 2, 2008, p. 3). The Examiner then appears to retreat to a position that these “network details” are all disclosed in Schein. (*Id.* (“[E]xaminer does not rely on Klosterman to teach such capabilities because they are already disclosed in Schein et al.”)). However, as demonstrated above (and as previously admitted by the Examiner), Schein does not disclose all of the claimed limitations, and Klosterman does not disclose the limitations lacking in Schein.

As such, the Examiner has failed to establish a *prima facie* case of obviousness. Neither Schein nor Klosterman discloses a first request to a server for a programming schedule and then a second request for recording instructions *from a server sent in response to* a selection from that schedule. At most, both Schein and Klosterman disclose only a single request to a server for a programming schedule, and neither discloses a request to the server in response to a selection

from that schedule. Nor has the Examiner pointed to any principle that would have motivated a person of ordinary skill in the art to modify Schein or Klosterman so as to add additional server operations so as to meet the requirements of the claims. Indeed, the order and timing required by the claim methods is counterintuitive when viewed in light of Schein and Klosterman. Therefore, the Examiner's rejection as to all claims must be reversed.

In the December 5 Office Action, the Examiner asserted that it would have been obvious "to exploit the well known remote control of a recording device as taught by Klosterman in the network server of Schein et al, in order to provide the viewer with a simple, efficient, and economical option of recording desire[d] programs without programming the VCR." (Dec. 5, 2007 Office Action, p. 6). In the final office action, the Examiner asserted that "Klosterman...provides the motivation...to modify the interactive system of Schein et al to be upgraded as a network controllable apparatus...." (Office Action mailed May 2, 2008, p. 3). As seen above, however, even if the type of "remote control of a recording device" disclosed in Klosterman were combined with Schein, the limitations of the claims would still not be met.

A conclusion of non-obviousness is also consistent with real life. As is apparent from the face of the Klosterman and Schein patents, both are assigned to the same company, and one of the inventors listed on the Schein patent was the inventor of the earlier Klosterman patent. Regardless of the fact that the Schein inventors therefore had access to all of the information disclosed in Klosterman, they did not modify Klosterman so as to arrive at the claimed methods. Thus, the Examiner's assertions otherwise are belied by the real world facts.

B. The Examiner Has Not Established A Prima Facie Case of Obviousness For Claims 3-7, 37, 39, 40, 45-46, 64-76, and 78-80 Because The Examiner Has Not Pointed To Any Disclosure of Recording Instructions That Include A Record Command

Even if the Examiner has established a prima facie case of obviousness for the other claims, he has not done so for claims 3-7, 37, 39, 40, 45-46, 64-76, and 78-80. These claims (via dependencies on claims 37 and 45) all require that the “recording control information” or the “recording instructions” include a “record command.” Indeed, claim 37 specifically requires that the “record command” be stored “at the server.” The specification distinguishes “function information” or “function command data” (such as a “record command, remind command, [and] repeat command”) from “duration information” and “channel information.” (Specification at ¶¶ 138, 142). The only recording instructions identified by the Examiner include the latter: “source ID, CH [channel], time, etc.” (Office Action mailed Dec. 5, 2007, p. 5; *see also* Office Action mailed July 18, 2005, at p. 4; Office Action mailed October 19, 2005, at p. 3). There is no disclosure of a “record command” stored at the server. Thus, the Examiner has failed to establish a disclosure of the transmission of a “record command” from a server in response to a selection of a television program and has therefore failed to establish a prima facie case of obviousness with respect to claims 3-7, 37, 39, 40, 45-46, 64-76, and 78-80.¹³

C. The Examiner Has Not Established A Prima Facie Case of Obviousness For Claims 69-72 Because The Combination Relied On By The Examiner Does Not Disclose That Programming Information Is Made Available Based On A Caller ID, Area Code, Or Phone Number

Even if the Examiner has established a prima facie case of obviousness for the other claims, he has not done so for claims 69-72. Claim 69 requires making programming

¹³ As pointed out in “Amendment G,” Schein and Klosterman appear to disclose a recording instruction that does comprise a record command, but that command is generated at the recording system, and not transmitted from a server. The Examiner does not point to or rely on that recording instruction (and rightfully so, because it is not transmitted from a server), but points to program schedule information transmitted from a server. Either way, the claims’ requirements are not disclosed in Schein or Klosterman.

information available to the user based on the user's caller ID, area code, or phone number, or any combination thereof. Claim 70 requires making appropriate programming information available based on the locality of a user's modem. Claim 71 requires making appropriate programming information available based on a caller ID associated with the user's modem. Claim 72 requires making programming information available to the user based on a phone number of the user. The Examiner asserts that these requirements are disclosed in Schein, but does not explain where. (Office Action dated Dec. 5, 2007, p. 4). In the past, the Examiner asserted that this limitation is disclosed in Schein and/or Klosterman merely because "modem dial up access" is disclosed. (Office Action mailed July 18, 2005, p. 4). But the fact that "modem dial up access" is used does not mean that the server is making itself aware of the locality of that modem (either through caller ID, or the area code or phone number of the modem) in order to send appropriate programming information based on that locality. Thus, the Examiner has failed to establish a prima facie case of obviousness as to claims 69-72.

D. The Examiner Has Not Established A Prima Facie Case of Obviousness For Claims 73 and 79 Because The Examiner Has Not Pointed To Any Disclosure Of The Transmission Of An End-Of VCR Control Information or About-to-Send VCR Control Information

Even if the Examiner has established a prima facie case of obviousness for the other claims, he has not done so for claims 73 and 79. Claim 73 requires "subsequent to downloading recording instructions, the server transmits data comprising an end-of VCR control information to the computing system." Claim 79 requires "the server sending data comprising about to send VCR control information prior to actually transmitting the recording control information." This is disclosed in Figure 10 and paragraph 135 of the specification. The Examiner asserts that Figure 4 of Klosterman "illustrates the concept of such well known VCR control information." (Office Action mailed May 2, 2008, pp. 2, 4). However, Figure 4 merely discloses a command

generated by the local control system to turn a VCR on or off. In contrast, the specification makes clear that “end-of VCR control information” is not a command which turns a VCR off. Rather, it is a marker or a flag in a transmission stream that indicates that transmission of all of the VCR control information “has been completed.” (Specification at ¶ 135). Similarly, the specification makes clear that “about to send VCR control information” is not a command which turns a VCR on. Rather, it is a marker or a flag in a transmission stream that indicates that VCR control information will follow. (Specification at ¶ 135). Therefore, the Examiner has failed to establish a prima facie case of obviousness as to claims 73 or 79.

E. The Examiner Has Not Established A Prima Facie Case of Obviousness For Claim 75 Because The Examiner Has Not Pointed To Any Disclosure Of a Binary ASCII-format Character String That Is Assigned Specific Control Functions

Even if the Examiner has established a prima facie case of obviousness for the other claims, he has not done so for claim 75. Claim 75 requires that recording instructions embedded in and received with television programs are inserted as “a binary ASCII-format character string that is assigned specific control functions.” This is disclosed in paragraph 144 of the specification. The Examiner asserts that these requirements are disclosed in Schein, but does not explain where. (Office Action dated Dec. 5, 2007, p. 4). Thus, the Examiner apparently cannot point to any disclosure in Klosterman or Schein disclosing the transmission of recording instructions with this type of data. As such, the Examiner has failed to establish a prima facie case of obviousness as to claim 75.

III. Conclusion

For the foregoing reasons, Appellant respectfully requests the Board to overturn the Examiner's rejections of the appealed claims 3-7, 15, 37, 39, 40, 44-47, 64-76, and 78-80.

Dated this 29th day of September 2008.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David R. Todd". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

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CLAIMS APPENDIX

1-2. (Cancelled).

3. (Previously Presented) A method as recited in claim 37, further comprising the act of receiving information representing a television signal provider that is to broadcast the one or more television programs to be recorded by the interactive television system.

4. (Previously Presented) A method as recited in claim 3, further comprising, prior to the act of receiving information representing a television signal provider, the act of transmitting information identifying a plurality of television signal providers that are capable of broadcasting television programs to the interactive television system.

5. (Previously Presented) A method as recited in claim 37, wherein the server transmits the recording instructions through the Internet.

6. (Previously Presented) A method as recited in claim 37, wherein the programming schedule includes a time, date and duration of a plurality of television programs, including the particular television program to be recorded.

7. (Previously Presented) A method as recited in claim 37, wherein the programming schedule includes transmission source information that identifies at least one of a television broadcast channel, a cable channel, and a satellite channel.

8-14. (Cancelled).

15. (Previously Presented) A method as recited in claim 44, further comprising the acts of:

prior to sending the first request, receiving user input at the computing system selecting a television signal provider associated with a location of the interactive television system; and

transmitting information representing the selection of the television signal provider to the server.

16-36. (Cancelled).

37. (Previously Presented) In a network server that communicates over a network with a recording apparatus that is configured to record television programs, a method for enabling the server to control the recording of one or more selected television programs by the recording apparatus, the method comprising the acts of:

storing a programming schedule at a server;

storing recording control information at the server, the recording control information including at least one record command that is transmittable over a network to a recording apparatus that is configured to record television programming;

the server receiving a user request, which is transmitted to the server through the Internet, for a webpage containing the programming schedule and that identifies one or more television programs;

in response to the user request, the server providing a user Internet access to the programming schedule in the form of a navigable webpage and from which a particular television program can be selected by the user for recording;

receiving, at the server, a user selection of the particular television program to be recorded, the selection of the particular television program to be recorded being made from the navigable webpage provided to the user through the Internet; and

in response to the particular television program being selected for recording, the server transmitting recording control information to the recording apparatus over the network, the recording control information comprising recording instructions that are configured to cause the recording apparatus to record the particular television program and such that the recording apparatus will thereafter be set up to record the particular television program, and wherein the recording instructions are transmitted to the recording apparatus from the server through at least one of a television signal and the Internet.

38. (Cancelled).

39. (Previously Presented) A method as recited in claim 37, wherein the recording apparatus comprises a VCR.

40. (Previously Presented) A method as recited in claim 37, wherein the recording instructions include the time, date and duration of the particular television program to be recorded.

41-43. (Cancelled).

44. (Previously Presented) In a recording system that is configured to record television programs and that is communicably connectable to a server through a network, a method for enabling the server to control the recording of one or more selected television programs by the recording system, the method comprising the acts of:

 sending a request from the recording system to the server for a program schedule that identifies television programs that can be received and recorded by the recording system ;

 receiving, at the recording system, the program schedule from the server through the Internet and in response to the request, the program schedule being provided as a webpage;

 displaying, at the recording system, the program schedule after it is received from the server;

 receiving, at the recording system, a user selection from the program schedule of a particular television program to be recorded;

 sending a request from the recording system to the server for the selected and particular television program to be recorded;

 receiving, at the recording system, and directly in response to the request for the particular television program to be recorded, recording instructions that will cause the recording system to record the particular television program, wherein the recording instructions from the server are received by the recording system through at least one of a television signal and the Internet.

45. (Previously Presented) A method as recited in claim 44, wherein the recording instructions include a record command for the recording system.

46. (Previously Presented) A method as recited in claim 45, wherein the recording system includes a VCR.

47. (Previously Presented) A method as recited in claim 44, wherein the recording instructions include at least one of the time, date, duration and tuning instructions corresponding to the particular television program to be recorded.

48-63. (Cancelled).

64. (Previously Presented) A method as recited in claim 37, wherein the request for a programming schedule is received at an Internet web site through the use of a conventional Web browser.

65. (Previously Presented) A method as recited in claim 37, wherein the programming schedule is provided through a web page of the server that is customized for the user.

66. (Previously Presented) A method as recited in claim 65, wherein prior to providing the programming schedule, user input is received at the web page identifying a television programming provider.

67. (Previously Presented) A method as recited in claim 76, wherein access to the programming homepage is accessible only after screening a user password.

68. (Previously Presented) A method as recited in claim 37, wherein the recording instructions are embedded in and received with the television signal.

69. (Previously Presented) A method as recited in claim 37, wherein the programming information is made available to the user based on a determination of at least one of a caller ID, area code and phone number of the user.

70. (Previously Presented) A method as recited in claim 37, wherein the programming schedule is based on determining a locality of a user's modem.

71. (Previously Presented) A method as recited in claim 70, wherein the locality of the user's modem is determined according to a caller ID.

72. (Previously Presented) A method as recited in claim 69, wherein the locality of the user's modem is determined according to a phone number.

73. (Previously Presented) A method as recited in claim 37, wherein subsequent to downloading recording instructions, the server transmits data comprising an end-of VCR control information to the computing system.

74. (Previously Presented) A method as recited in claim 68, wherein the recording instructions are inserted in special television channel.

75. (Previously Presented) A method as recited in claim 68, wherein the recording instructions are received as a binary ASCII-format character string that is assigned specific control functions.

76. (Previously Presented) A method as recited in claim 37, further comprising:
receiving, at the server, a request from a computing system to access a programming homepage;
in response to the request to access the programming homepage, providing the computing system access to the programming homepage, the programming homepage identifying a plurality of television signal providers;
receiving, at the server, a selection of an appropriate one of the plurality of television signal providers; and
in response to the computing system selecting the appropriate television signal provider, and upon receiving a request from the computing system for a corresponding program schedule, the server providing the programming schedule.

77. (Cancelled).

78. (Previously Presented) A method as recited in claim 37, wherein the recording instructions are received through the Internet.

79. (Previously Presented) A method as recited in claim 37, wherein the method further includes the server sending data comprising about to send VCR control information prior to actually transmitting the recording control information.

80. (Previously Presented) A method as recited in claim 37, wherein the recording control information comprises VCR control information.

EVIDENCE APPENDIX

Not applicable.

RELATED PROCEEDINGS APPENDIX

A copy of the Board's decision in Appeal No. 2006-0604, dated June 30, 2006, is attached hereto.

2082717_1

RELATED PROCEEDINGS APPENDIX

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

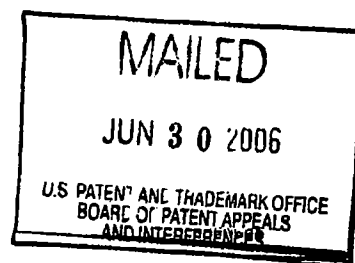
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN J. DANIELS

Appeal No. 2006-0604
Application No. 09/952,582

ON BRIEF



Before RUGGIERO, SAADAT, NAPPI, Administrative Patent Judges.
RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 2-25, which are all of the claims pending in this application. Claim 1 has been cancelled.

The claimed invention relates to a time shifting event recorder associated with a television in which a time sequential signal representing an event is received. A portion of the signal is recorded in a first recording medium while a second recording medium records a different portion of the signal. Under user control, portions of the event can be recorded while other portions are displayed permitting, at selected intervals,

respective recorded portions of the signal to be retrieved and played back, thereby allowing the user to view or listen to a time-shifted representation of the event.

Claim 2 is illustrative of the invention and reads as follows:

2. In a processing system associated with a television, a method for pausing the display of a television program that is included in a signal received at the processing system, comprising the acts of:

continually receiving the signal at the processing system, the signal including a sequence of images that represent the television program;

as a first portion of the signal is being continually received, displaying the television program included in the signal on the television;

receiving at the processing system a viewer-initiated pause command at a first time;

recording at least a second portion of the signal to a recording medium associated with the processing system, the beginning of said second portion corresponding to the time at which the viewer-initiated pause command was received;

as the signal continues to be received and after the recording of the second portion has begun, receiving at the processing system a viewer-initiated resume command, and

after receiving the viewer-initiated resume command, resuming display of the television program by displaying the second portion of the signal and simultaneously continuing to record the signal.

The Examiner relies on the following prior art:

Dunlap et al. (Dunlap)	5,216,552	Jun. 01, 1993 (filed Aug. 30, 1988)
Goldwasser et al. (Goldwasswer)	5,241,428	Aug. 31, 1993 (filed March 12, 1991)
Hong	5,257,142	Oct. 26, 1993 (filed Apr. 27, 1992)

Claims 2, 4, 14, 15, 17, 18, 20, 21, 23, and 24 stand finally rejected under 35 U.S.C. § 102(e) as being anticipated by Goldwasser. Claims 3, 5-13, 16, 19, 22, and 25 stand finally rejected under 35 U.S.C. § 103(a). As evidence of obviousness, the Examiner offers Goldwasser alone with respect to claims 5, 16, and 22, adds Dunlap to Goldwasser with respect to claims 3 and 6-13, and adds Hong to Goldwasser with respect to claims 19 and 25.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Briefs¹ and Answer for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the Examiner, the arguments in support of the rejections, and the evidence of anticipation and obviousness relied upon by the Examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellant's arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

¹ The Appeal Brief was filed March 7, 2005. In response to the Examiner's Answer mailed May 20, 2005, a Reply Brief was filed July 15, 2005, which was acknowledged and entered by the Examiner as indicated in the communication dated September 30, 2005.

It is our view, after consideration of the record before us, that the disclosure of Goldwasser fully meets the invention as recited in claims 2, 4, 14, 15, 17, 18, 20, 21, 23, and 24. In addition, with respect to the Examiner's obviousness rejection, we are of the opinion that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in the appealed claims 3, 5-13, 16, 19, 22, and 25. Accordingly, we affirm.

At the outset, we note that Appellant's arguments in the Briefs do not address the merits of the Examiner's 35 U.S.C. § 102(e) rejection, based on Goldwasser, nor the 35 U.S.C. § 103(a) rejection, in which Goldwasser is used as the primary reference. Instead, Appellant's sole argument relies on the declaration filed September 21, 1999 under 37 CFR § 131 in parent application Serial No. 08/306,642, as well as the supplemental declaration filed June 21, 2004 under 37 CFR § 131 in the present application, both signed by the named inventor, John J. Daniels.² According to Appellants, these declarations set forth facts which are sufficient to establish a reduction to practice before the March 12, 1991 filing date of the Goldwasser reference, thereby successfully removing Goldwasser as a prior art reference.

² The supplemental declaration of June 21, 2004 was submitted to establish that the acts set forth in the September 21, 1999 declaration were carried out in the United States.

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After reviewing the submitted Rule 131 declarations in light of the arguments of record, we are in general agreement with the Examiner's position as stated in the Answer. We find no error in the Examiner's stated position (Answer, page 16) that the entirety of the evidence submitted by Appellant, including the declarations and the attached page of notes, is insufficient to establish an actual reduction to practice of the claimed reference before the filing date of the Goldwasser reference.

In response, Appellant contends (Brief, pages 12 and 13; Reply Brief, pages 4 and 5) that the Examiner has improperly focused on the page of notes attached to the original declaration and ignored the statements in paragraphs 3-6 of the original declaration which describe various experiments carried out by the inventor, Mr. Daniels. To the contrary, however, we find from the Examiner's statement at page 16 of the Answer, that the entirety of the presented evidence, including paragraphs 3-6 of the original declaration as well as the attached notes, has been considered. That the Examiner has drawn a different conclusion from that asserted by Appellant does not mean that evidence has been ignored.

Further, we do not dispute Appellant's citation of case law, i.e., Ex parte Hook, 102 USPQ 130 (Bd. App. 1953), in support of the assertion that an inventor's sworn testimony in a Rule 131 affidavit does not require corroboration. However, while

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Appellant may stand on his affidavit if he so chooses, it is also true that the probative value given to such testimony is a factual question. In considering the issue of the antedating of a reference, "the probative value of the inventor's testimony is as for any factual question: the weight and value of the evidence is determined, with due consideration to the issue to be decided as well as any contrary evidence and the burden of proof." See Loral Fairchild Corp. v. Matsushita Electrical Industrial Co., 266 F.3d 1358, 1364, 60 USPQ2d 1361, 1367 (Fed. Cir. 2001).

With the above discussion in mind, upon review of the totality of evidence presented by Appellant to antedate the Goldwasser reference, it is our opinion that the page of notes attached to the original declaration stands as evidence contrary to Appellant's statements in the declaration. In our view, this page of notes, while perhaps establishing a conception of the claimed invention, provides evidence that the claimed invention was not successfully reduced to practice as alleged.

For example, the written statements at the right side of the note page "Can we build a circuit for this," and "Ask Rick about video and audio delays" support the Examiner's position (Answer, page 16) that the notes are a "proposal and not a reduction to practice." Similarly, the written note page comments "no good" at the outputs of the illustrated VCR 1 and VCR 2 blocks, and "missed chunks of show" and "but still missed chunks of show" at

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the left and right sides of the note page stand as further evidence which calls into question Appellant's alleged actual reduction to practice.

For all of the above reasons, we are in agreement with the Examiner that Appellant's Rule 131 declarations are not sufficient to establish an actual reduction to practice before the filing date of the Goldwasser reference. Accordingly, since we find no error in the Examiner's 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a) rejections, and there are no arguments to the contrary from Appellant, we sustain the Examiner's rejections of all the claims on appeal. Therefore, the decision of the Examiner rejecting claims 2-25 is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective September 13, 2004).

AFFIRMED

JOSEPH F. RUGGIERO

JOSEPH F. RUGGIERO
Administrative Patent Judge

Mahsid D. Lachari

MAHSHID D. SAADAT
Administrative Patent Judge

ROBERT E. NAPPI

Administrative Patent Judge

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Appeal No. 2006-0604
Application No. 09/952,582

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1000 EAGLE GATE TOWER
SALT LAKE CITY, UT 84111